

FOR OFFICIAL USE ONLY
Law Enforcement Sensitive

DEPARTMENT OF THE ARMY
U.S. ARMY CRIMINAL INVESTIGATION COMMAND
76th MP Det (CID), Camp Slayer, IZ APO AE 09342

13 Oct 2006

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: CID REPORT OF INVESTIGATION - FINAL (C)/SSI/JOINT -
0081-2006-CID259-75940 - 5M3A / 5X5 / 5H4A / 5X1 / 9G2B / 9G2C

DATES/TIMES/LOCATIONS OF OCCURRENCES:

1. 15 FEB 2006, 1959 - 15 FEB 2006, 2300; GRID COORDINATE 38S LC 39455
02315, AR RAMADI, IRAQ

2. 03 APR 2006, 1507 - 03 APR 2006, 1617; B COMPANY, 1/109TH INFANTRY
DIVISION, FOB BLUE DIAMOND, RAMADI, IRAQ, APO AE 09386

3. 05 MAY 2006, 2000 - 05 MAY 2006, 2321; FORT MONMOUTH RESIDENT
AGENCY (CID), FORT MONMOUTH, NJ 07703

DATE/TIME REPORTED: 13 MAR 2006, 1510

INVESTIGATED BY:

(b)(6) (b)(7)(C)(b)(3), (b) (7)(E)

SUBJECT:

1. (b)(6) (b)(7)(C)(b)(3)

(b)(6) (b)(7)(C)(b)(3) MALE; WHITE; (b)(6) (b)(7)(C)(b)(3)

(b)(6) (b)(7)(C)(b)(3)

(b)(6) (b)(7)(C)(b)(3) [FALSE OFFICIAL STATEMENT], [OBSTRUCTING
JUSTICE], [NEGLIGENT HOMICIDE], [CONSPIRACY]

2. (b)(6) (b)(7)(C)(b)(3)

MALE; WHITE (b)(6) (b)(7)(C)(b)(3)

FOR OFFICIAL USE ONLY
Law Enforcement Sensitive

(b)(6) (b)(7)(C)(b)(3); [FALSE OFFICIAL STATEMENT], [OBSTRUCTING JUSTICE], [CONSPIRACY]

3. (b)(6) (b)(7)(C)(b)(3)

(b)(6) (b)(7)(C)(b)(3) MALE; WHITE (b)(6) (b)(7)(C)(b)(3)

(b)(6) (b)(7)(C)(b)(3)

(b)(6) (b)(7)(C)(b)(3) [FALSE OFFICIAL STATEMENT],
[OBSTRUCTING JUSTICE], [CONSPIRACY]

VICTIM:

1. ZABEN, GANI AHMAD (DECEASED) ; CIV; IRAQ; MALE; WHITE; XZ ;
[NEGLIGENT HOMICIDE] (NFI)

2. U.S. GOVERNMENT; ; [FALSE OFFICIAL STATEMENT], [OBSTRUCTING JUSTICE], [CONSPIRACY]

INVESTIGATIVE SUMMARY:

This investigation was initiated upon notification by (b)(6) (b)(7)(C)(b)(3)

(b)(6) (b)(7)(C)(b)(3)

(b)(6) (b)(7)(C)(b)(3) who related he had been contacted by the Commander of B Company (Co), 1/109th Infantry (INF) Battalion (BN), Forward Operating Base (FOB) Blue Diamond, IZ, APO AE 09386 (BDIZ), pertaining to a possible wrongful death of an Iraqi civilian, identified as Mr. ZABEN.

Investigation by the Naval Criminal Investigative Service (NCIS) and this office established probable cause to believe (b)(6) (b)(7)(C)(b)(3)

(b)(6) (b)(7)(C)(b)(3)

committed the offense of negligent homicide when they engaged Mr. ZABEN, who was unarmed and not a threat to them with small arms fire, while conducting a dismounted patrol in the area, which resulted in his death.

Investigation by NCIS and this office established probable cause to believe (b)(6) (b)(7)(C)(b)(3)

(b)(6) (b)(7)(C)(b)(3)

committed the offenses of conspiracy, false official statement, and obstructing justice when they agreed to place an AK-47 rifle which was seized from a nearby home, next to the body of Mr. ZABEN, to give the appearance he was armed. Subsequently,

(b)(6) (b)(7)(C)(b)(3)

were interviewed and provided a statement, they knew to be false.

FOR OFFICIAL USE ONLY
Law Enforcement Sensitive

The offenses involving (b)(6) (b)(7)(C)(b)(3) were not listed in this investigation as those offenses were investigated by NCIS, Miramar, CA, under Case number 09MAY06-MWMM-0048-7HMA (b)(6) (b)(7)(C)(b)(3) was never listed as a subject in the NCIS investigation, was not pending any punishment, and was no longer a member of the United States Marine Corps.

STATUTES:

Article 81, UCMJ: Conspiracy
Article 107, UCMJ: False Official Statement
Article 134, UCMJ: Negligent Homicide
Article 134, UCMJ: Obstructing Justice

EXHIBITS/SUBSTANTIATION:

Attached:

1. Agent's Investigation Report (AIR) of (b)(6) (b)(7)(C)(b)(3) 21 Mar 06, detailing the initial notification.
2. AIR of (b)(6) (b)(7)(C)(b)(3) 15 Apr 06, detailing coordination's with (b)(6) (b)(7)(C)(b)(3) and (b)(6) (b)(7)(C)(b)(3) collection of the daily staff journal, coordination with (b)(6) (b)(7)(C)(b)(3) interviews of (b)(6) (b)(7)(C)(b)(3) (b)(6) (b)(7)(C)(b)(3) and Mr. (b)(6) (b)(7)(C)(b)(3) the viewing of weapons photo line-up and interview of Mr. (b)(6) (b)(7)(C)(b)(3)
3. Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 01 Apr 06, detailing he accompanied (b)(6) (b)(7)(C)(b)(3) to clear the home next door, where (b)(6) (b)(7)(C)(b)(3) seized an AK-47.
4. Rough sketch, prepared by (b)(6) (b)(7)(C)(b)(3) 01 Apr 06.
5. Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 02 Apr 06, detailing he did not move from his position while conducting security on the home.
6. Rough sketch prepared by (b)(6) (b)(7)(C)(b)(3) 02 Apr 06.
7. Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 02 Apr 06, detailing he accompanied (b)(6) (b)(7)(C)(b)(3) to clear the home next door, where (b)(6) (b)(7)(C)(b)(3) seized an AK-47.

FOR OFFICIAL USE ONLY
Law Enforcement Sensitive

8. Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 02 Apr 06, detailing he was the first one to approach Mr. ZABEN and saw an AK-47 on the northern edge of the road.
9. Rough sketch prepared by (b)(6) (b)(7)(C)(b)(3) 02 Apr 06.
10. Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 03 Apr 06, detailing he was inside the home when shots were fired coming from (b)(6) (b)(7)(C)(b)(3) position.
11. Debrief Report for Mission 0215-027, 15 Feb 06.
12. Waiver Certificate and Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 03 Apr 06, detailing he fired upon Mr. ZABEN because he felt Mr. ZABEN and the second male, posed a threat to him and his squad.
13. Waiver Certificate and Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 03 Apr 06, detailing no one placed a weapon near Mr. ZABEN's body after the shooting.
14. Rough sketch prepared by (b)(6) (b)(7)(C)(b)(3) 03 Apr 06.
15. Daily Staff Journal, 15 Feb 06.
16. Statement of (b)(6) (b)(7)(C)(b)(3) 15 Feb 06, detailing he heard an announcement coming from a local Mosque, which said, "Prepare to defend yourselves," and he fired upon two males approaching his position with AK-47's.
17. Statement of (b)(6) (b)(7)(C)(b)(3) 15 Feb 06, detailing he was told by (b)(6) (b)(7)(C)(b)(3) about an announcement made from a local Mosque, and related he saw two males approaching their position and opened fire.
18. Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 04 Apr 06, detailing he was inside the home when shot were fired, and his treatment of Mr. ZABEN's injury.
19. Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 04 Apr 06, detailing he was inside the home, when shots were fired and then he and other Soldiers approached Mr. ZABEN.
20. Rough Sketch prepared by (b)(6) (b)(7)(C)(b)(3) 04 Apr 06.
21. Weapons photographic line-up, containing six photographs.
22. Death Scene Examination AIR of (b)(6) (b)(7)(C)(b)(3) 15 Apr 06.

FOR OFFICIAL USE ONLY
Law Enforcement Sensitive

23. Death Scene Sketch, prepared by (b)(6) (b)(7)(C)(b)(3) 15 Apr 06.

24. AIR of (b)(6) (b)(7)(C)(b)(3) 19 Apr 06, detailing the interviews of (b)(6) (b)(7)(C)(b)(3)
(b)(6) (b)(7)(C)(b)(3)

25. Rights Waiver Certificate of (b)(6) (b)(7)(C)(b)(3) 16 Apr 06, wherein he waived his rights.

26. Rights Waiver Certificate of (b)(6) (b)(7)(C)(b)(3) 16 Apr 06, wherein he waived his rights.

27. Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 19 Apr 06, detailing he was placed near the rear door of the home, where he pulled security, and heard shots fired from (b)(6) (b)(7)(C)(b)(3) position.

28. AIR of SA (b)(6) (b)(7)(C) Fort Irwin Resident Agency, Fort Irwin, CA 92310, 10 May 06, detailing receipt of request for assistance, and her coordination with SA (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) Naval Criminal Investigative Service (NCIS), Miramar Naval Air Station, CA.

29. AIR of (b)(6) (b)(7)(C)(b)(3) 12 Jun 06, detailing coordination's with SA (b)(6) (b)(7)(C) (b)(6) (b)(7)(C)(b)(3) interviews of (b)(6) (b)(7)(C)(b)(3) and (b)(6) (b)(7)(C)(b)(3) collection of Mr. ZABEN's treatment, receipt of the U.S. Army Criminal Investigation Laboratory (USACIL) report, coordination with (b)(6) (b)(7)(C)(b)(3) receipt of the USACIL report, interview of (b)(6) (b)(7)(C)(b)(3) preparation of story board, receipt of USACIL report, coordination with (b)(6) (b)(7)(C)(b)(3) and name checks.

30. 2nd Marine Division Rules of Engagement Card, 15 Apr 05.

31. Aerial Photography of MC4, Ar Ramadi, IZ, location of incident, not dated.

32. Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 11 May 06, detailing he fired his weapon after (b)(6) (b)(7)(C)(b)(3) told him the males were armed.

33. Rough sketch prepared by (b)(6) (b)(7)(C)(b)(3) 1 May 06.

34. Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 30 May 06, detailing her medical treatment of Mr. ZABEN.

35. Voodoo Mobile Shift Debrief, 15 Feb 06, detailing the medical treatment Mr. ZABEN received.

36. USACIL Examination Report, Latent Prints Division, 19 May 06, detailing no identifiable

FOR OFFICIAL USE ONLY
Law Enforcement Sensitive

prints were found on the weapon.

37. USACIL Examination Report, Firearms and Toolmarks Division, 23 May 06, detailing the weapon collected functioned properly.

38. Rights Waiver Certificate and Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 12 Jun 06, detailing he was not completely sure the weapon found, was at the north edge of the road.

39. Story Board, not dated.

40. USACIL Examination Report, Latent Print Division, 01 Jun 06, detailing (b)(6) (b)(7)(C)(b)(3) prints could not be compared, as no identifiable prints were found on the weapon examined.

41. AIR of SA (b)(6) (b)(7)(C) Fort Monmouth Resident Agency, Fort Monmouth, NJ, 19 Jul 06, detailing receipt of the request for assistance, interview of (b)(6) (b)(7)(C)(b)(3) and submission of (b)(6) (b)(7)(C)(b)(3) fingerprints to USACIL for examination.

42. Rights Waiver Certificate and Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 05 May 06, detailing he cleared the second home and placed the weapon seized next to the weapon from the first home and he did not place a weapon near Mr. ZABEN.

43. Sworn Statement of (b)(6) (b)(7)(C)(b)(3) 31 May 06, detailing he never placed a weapon near Mr. ZABEN.

44. AIR of (b)(6) (b)(7)(C)(b)(3) 19 Aug 06, detailing coordination with (b)(6) (b)(7)(C)(b)(3) and command, and receipt of NCIS report.

45. NCIS report 09MAY06-MWMM-0048-7HMA, 05 Jul 06.

46. AIR of (b)(6) (b)(7)(C)(b)(3) 10 Oct 06, detailing the coordination with (b)(6) (b)(7)(C)(b)(3)

47. Photographic packet (CD) comprised of 8 photographs.

a. Packet containing photographs 1-8 (Death Scene).

48. Photographic CD 060081.259 containing all photographic images and originals of Exhibit 47. (USACRC and file copies only)

49. Crime Lab Examination Request, 03 May 06, requesting the examination of the weapon

FOR OFFICIAL USE ONLY
Law Enforcement Sensitive

collected for any identifiable prints. (USACRC and file copies only)

50. Crime Lab Examination Request, 16 May 06, requesting the comparison of (b)(6) (b)(7)(C)(b)(3) print with any prints found on the weapon collected. (USACRC and file copies only)

51. DA Form 4137, Evidence Custody Document (ECD), 15 Apr 06, voucher (VO) 0359-06. (USACRC and file copy only)

Not Attached:

Retained in the Evidence Depository, 10th Military Police Battalion, Camp Victory, IZ APO AE 09342:

52. AK-47 Rifle (U.S. Government), VO 0359-06.

The originals of Exhibits 1 through 10, 12 through 14, 18 through 29, 34, 38 through 39, 41 through 44 and 46 through 48 are forwarded with the USACRC copy of this report. The originals of Exhibits 11, 15 through 17, and 31 are retained in the files of the B Co, 1/109 INF, BDIZ. The original of Exhibit 30 is retained in the files of 2nd Marine Division Headquarters, BDIZ. The originals of Exhibits 32, 33 and 45 are retained in the files of NCIS, Miramar Air Naval Base, CA. The original of Exhibit 35 is retained in the files of the 186th FSB, CRIZ. The originals of Exhibits 49 and 50 are retained in the files of the USACIL, Forest Park, GA 30297-5122. There are two originals of Exhibits 36, 37 and 40, one is forwarded with the USACRC copy of this report, the other copy is retained in the files of USACIL. The original of Exhibit 51 is maintained in the files of the evidence depository, 10th MP BN, Camp Victory, IZ APO AE 09342.

STATUS: This is a Final (C) report. (b)(6) (b)(7)(C)(b)(3)

(b)(6) (b)(7)(C)(b)(3)

This was a joint investigation with NCIS, case number 09MAY06-MWMM-0048-7HMA.

Summary of leads: Interviews of Mr. (b)(6) (b)(7)(C) (b)(6) (b)(7)(C)(b)(3) and receipt of

FOR OFFICIAL USE ONLY
Law Enforcement Sensitive

Mr. ZABEN's death certificate.

REPORT PREPARED BY

REPORT APPROVED BY

(b)(6) (b)(7)(C)(b)(3), (b) (7)(E)

(b)(6) (b)(7)(C)(b)(3)

DISTRIBUTION:

Dir, USACRC, 6010 6th Street, Ft Belvoir, VA 22060

CDR, 10th MP Bn (CID) (ABN), Camp Victory, IZ 09342

CDR, 76th MP Det (CID), 10th MP BN (CID), Camp Victory, APO AE 09342

THRU: CDR, USACIDC, 6010 6th Street, Fort Belvoir, VA 22060

TO: Chief, National Guard Bureau, ATTN: CIOP-COP-PO

(b)(6) (b)(7)(C)(b)(3)

CDR, 76th MP Det (CID), 10th MP Bn (CID), Camp Victory, APO AE 09342

SJA, 4ID, Camp Liberty, IZ

(b)(6) (b)(7)(C)(b)(3)

THRU: CDR, 55th Brigade (Mechanized), Scranton, PA 17701

TO: CDR, 1/109TH Infantry, Scranton, PA 17701

FILE